

ST 05-0019-PLR 11/18/2005 DELIVERY CHARGES

This letter discusses how shipping and handling charges should be handled for in-home host or hostess sales. (This is a PLR.)

November 18, 2005

Dear Xxxxx:

This letter is in response to your letter dated August 30, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

The Requested Ruling

ABC is requesting a Private Letter Ruling (pursuant to 2 Ill. Adm. Code 1200.1110) stating whether freight charges on customer invoices should be subject to Illinois ROT liability. If it is deemed that freight charges are subject to Illinois sales tax, we are requesting information on what sales tax rate should be used when there is a combination of food and general merchandise products sold.

Statement of Facts

ABC is in the business of soliciting orders for food (seasonings, bread mixes, etc.) and kitchen accessories through in-home parties. ABC is a for-profit corporation organized under the existing laws of the State of Illinois. The current products applicable to this ruling include: seasonings, soups, bottled sauces, marinades, dips, bread mixes, baking mixes and kitchen accessories.

A hostess sponsors an in-home party for friends at which a ABC consultant shows and solicits orders for our products. Each individual party customer is charged an approximate amount for freight for their order (based on a chart). The entire party order is then shipped intrastate FOB Destination via common carrier to the party hostess. The party hostess then distributes the party orders to the individual customers. Neither the customer nor the hostess has the option of picking up their products at our warehouse.

Conclusion

We respectfully request the Department issue a Private Letter Ruling stating whether ABC is liable for collecting and remitting ROT for the freight charges on these orders. If the Department deems these freight charges to be subject to the ROT, then we are also requesting a ruling on what tax rate is to be charged for the freight. An individual customer's order may include both products taxed at the food and general merchandise rates.

To the best of our knowledge, the Department has not previously ruled on the same or a similar issue for the taxpayer or any predecessor and neither the taxpayer nor any representative has ever previously submitted the same or similar issue to the Department at any time, including such request that may have been withdrawn prior to the issuance of a letter ruling. We are aware of no other supporting or contrary relevant authorities within the meaning of 2 Ill. Admin. Code 1200(b)(5)&(6).

No audit or litigation is currently pending with the Department. No trade secret or other information need be deleted from the publicly disseminated version of the private letter ruling.

DEPARTMENT'S RESPONSE

The Department's regulation "Cost of Doing Business Not Deductible" 86 Ill. Adm. Code 130.410, provides that "[i]n computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer.

This principle is further explained in the Department's regulation, "Transportation and Delivery Charges" 86 Ill. Adm. Code 130.415 which provides in subsection (e) that transportation or delivery charges paid by a seller in acquiring property for sale are merely costs of doing business to the seller and may not be deducted by such seller in computing his Retailers' Occupation Tax liability, even though he passes such costs on to his customers by quoting and billing such costs separately from the selling price of tangible personal property which he sells. The same is true of transportation or delivery charges paid by the seller in moving property to some point from which the property (when subsequently sold) will be delivered or shipped to the purchaser.

Based upon the information you have provided, when ABC sends merchandise to party hosts or hostesses who then distribute the merchandise to purchasers, shipping and handling charges are part of ABC's cost of doing business and are subject to tax. See 86 Ill. Adm. Code Sections 130.410 and 130.415.

In regard to the tax rate that applies to these freight charges, you have not provided enough information for us to issue a binding letter ruling. However, we hope that the following general information is helpful.

When a retailer sells a group of items and the purchaser pays a single charge for incoming freight (containing high rate and low rate items), the tax rate applied to the freight charges for that purchase would be the low rate of tax if the value of the low rate items shipped is greater than the value of the high rate items. If the value of the low rate items is the same as or less than the value of the high rate items, the high rate of tax should be charged on the freight charge for that purchaser's entire purchase.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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